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OFFICE OF PETITIONS

In re Patent No. 7,452,987
Klaus Giese et al.
Issue Date: November 18, 2008
Application No. 10/633,630
Filed: August 5, 2003
Atty Docket No. ST-101XT

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT", filed December 22, 2008, pursuant to patentees' duty of candor and good faith to the Office. Patentee states that the 107 days of patent term adjustment as indicated on the above-identified Patent is incorrect.

The request for reconsideration of the patent term adjustment indicated on the patent is DISMISSED.

On November 18, 2008, the application matured into U.S. Patent No. 7,452,987, with a revised patent term adjustment of 107 days. Patentee states that the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) of 107 days shown in the PAIR system was incorrect because a Request for Continued Examination (RCE) was filed on September 7, 2007 and thus constituted additional applicant delay.

A review of the application history reveals that the patent term adjustment of 107 days indicated on the patent is correct. The application was entitled to a patent term adjustment of 169 days for Office delay in mailing a first notification under 35 U.S.C. 132 on March 23, 2005, fourteen months and 169 days after the filing date of the application, August 5, 2003, within the meaning of § 1.702(a)(1) and 47 days for failure to respond to a reply under 35 U.S.C. 132 on July 30, 2008, four months and 47 days after February 13, 2008, the date which applicants filed a reply, within the meaning of § 1.702(a)(2). Moreover, the Office missed the three-year provision by a period of 445 days, and the Office overall delay was 445 days as noted in the PAIR calculation.

A further review of the application history reveals that the patent term adjustment of 445 days of delay was reduced by two hundred ninety-four (294) days of applicant delay pursuant to 37 C.F.R. §1.704(b) and an additional forty-four (44) days for applicants' filing of the drawings after the mailing of the notice of allowance pursuant to 37 C.F.R. §1.704(c)(10).

Applicant is advised that the RCE was timely filed on September 7, 2007, within three months after the mailing of the Final Office Action on June 13, 2007 and thus no reduction was warranted. The filing of an RCE cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment. 37 CFR § 1.703(b)(1).

In view thereof, the patent term adjustment indicated on the patent of one hundred seven (**107**) days is maintained.

As this letter was submitted as an advisement to the Office of an error in Patentee's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks Patentees for their good faith and candor in bringing this to the attention of the Office.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

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